

STATINTL

TO : <input type="text"/>		DATE OF REQUEST
		16 March
FROM : WPB		SUSPENSE DATE
SUBJECT:		
Comments on H.R. 12048		
NOTES		
<p>Attached is a second draft of our proposed report on H.R. 12048 (also to be used for S. 796). I have tried to reflect your comments on the first draft. <u>The House Committee began mark-up today</u> and the Senate is scheduled to begin hearings next week. OMB is expecting our report and has promised to expedite clearance. Therefore I think it is imperative that we get this report out by tomorrow or Thursday if we are to have any impact.</p>		
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COORDINATED WITH (list names as well as offices)		
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ACTION REQUIRED BY LLM		
Approve for typing in final		
<p>Approved For Release 2002/06/05 : CIA-RDP77M00144R000800160023-5</p>		

Dear Mr. Chairman:

I am writing to offer our views on H.R. 12048, a bill "Amending Title 5 of the United States Code to improve agency rule-making by expanding the opportunities for public participation, by creating procedures for congressional review of agency rules, and by expanding judicial review, and for other purposes."

Subsections (b) through (e) of section 553 of the Administrative Procedure Act establish certain procedures to be followed by Federal agencies in rule-making. These procedures include advance public notice of rule-making, opportunity to submit views, and delayed effectiveness of rules. Subsection (a) of section 553 makes these procedures inapplicable "to the extent that there is involved a military or foreign affairs function of the United States." H.R. 12048 would amend subsection (a) and exempt instead "a matter pertaining to a military or foreign affairs function of the United States that is (A) specifically authorized under criteria established by Executive order to be kept secret in the interest of the national defense or foreign policy and (B) is in fact properly classified pursuant to such Executive order."

The foreign intelligence responsibilities performed by the Central Intelligence Agency are fully excluded from the requirements of section 553 because they fall within the existing general exemption for military or foreign affairs functions. It is our position that foreign intelligence functions should continue to be generally excluded from public rule-making procedures, and ~~we are opposed to narrowing the existing exemption, as proposed in H.R. 12048~~ ~~to cover only those matters classified under Executive order.~~

Honorable James O. Eastland, Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for our views on S. 796, a bill
"To amend chapter 5, subchapter II, of Title 5, United States Code, to
provide for improved administrative procedures.

~~The chief reason for maintaining~~ The existing exemption is that
it fully protects sensitive intelligence matters from public disclosure and,

therefore, achieves society's interest in preserving the secrecy of certain
foreign intelligence activities. *This would not necessarily be accomplished under*

The exemption proposed in H.R. 12048 for
the reasons stated above. The Director of Central Intelligence to
would not adequately protect these matters. This is ~~because~~ *because there are*
protect intelligence sources and methods from unauthorized disclosure
certain intelligence matters which are not classified pursuant to Executive
order in a public statutory directive and is not based upon Executive Order
order "in the interest of the national defense or foreign policy," as required

by H.R. 12048, but ~~which~~ *are* sensitive from an intelligence standpoint and

fall under the statutory authority of the Director of Central Intelligence to
protect intelligence sources and methods from unauthorized disclosure.

Thus, the proposed exemption would not protect these matters from public
disclosure.

There are two additional considerations
In addition, the existing exemption for military and foreign affairs

functions should be maintained in light of policy considerations which

maintain the exemption from the
militate against any introduction of public rule-making procedures *in* the
foreign intelligence area. A system of rule-making must strike a balance

between the desirability of involving members of the public in decisions

which directly affect them and the need to conduct the Government's business

efficiently and expeditiously. In the foreign intelligence area, society's

interest in public participation is slight. The Central Intelligence Agency

is not engaged in economic, social or other kinds of regulation which affect

the public; nor is it a policy making agency in the field of foreign relations.

The Agency was established under the National Security Act of 1947 to correlate

and evaluate foreign intelligence and to perform other intelligence-related

duties at the direction of the National Security Council. Rules involving

hence, it is
foreign intelligence functions are likely to be so limited in application and
only
have such a minimal public impact, that solicitation of public comment would
be senseless. In addition, public participation in such rule-making is unlikely
to make a significant or positive contribution. Thus, society's slight interest
~~that it makes a positive contribution~~
in involving the public in rule-making related to foreign intelligence is
substantially outweighed by the public's interest in the discrete and effective
performance of the foreign intelligence function.

the crucial example of the public's interest in the performance of the foreign intelligence function
the procedure which has been seriously preserved
the President's function
Finally, H. R. 12048 raises a serious constitutional question, whether
Congress may constitutionally impose procedural requirements of its choosing
on the President in the performance of certain duties committed to his office.
the President
It is believed that foreign intelligence functions lie within this zone of special
competence.

For the foregoing reasons, this Agency opposes favorable consideration
of H. R. 12048 *to be passed from*

The Office of Management and Budget has advised there is no objection
to the submission of this report from the standpoint of the Administration's
program.

Sincerely,

George Bush
Director